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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,520

07/20/2006

Ferenc Jozsef Rakoczi

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EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,520	<b>Applicant(s)</b> RAKOCZI ET AL.	
	<b>Examiner</b> FRANK I. CHOI	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 59-95 is/are pending in the application.
- 4a) Of the above claim(s) 91-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 59-95 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/14/2010</u> .   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 65, 67, 69, 71, 73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 65, 71 and 73 have been amended to recite “yellow dispersion dye” instead of Hansa® Brilliant yellow 4GX, however, there is no support in the specification and claims as originally filed for said limitation. Hansa ® Brilliant yellow 4GX is disclosed to be a specific type of azo dye not a "yellow dispersion dye" (Specification, page 4). Claims 67, 71 and 73 have been amended to recite “non-ionogenic dispersant or detergent” instead of Agrimer®, however, there is no support in the specification and claims as originally filed for said limitation. The specification describes Agrimer® as a tenside not a “non-ionogenic dispersant or detergent”. Claims 69, 71, 73 have been amended to recite “malodextrins and dehydrated glucose syrups” instead of Glucidex®, however, there is no support in the specification and claims as originally filed for said limitation. The specification describes Glucidex as a structure-stabilizer not as a “malodextrins and dehydrated glucose syrups”.

Claims 59-90 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 59-90 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed 6/2/2010. In that paper, applicant has stated that "the instantly claimed granule bait exhibits a strong luring effect on house flies with a long-lasting efficacy due to the hydrophobicity of the chemical composition", and this statement indicates that the invention is different from what is defined in the claim(s) because there is nothing in the claims which require the granule to be hydrophobic.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-66, 68-70, 72, 74-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 4,855,133 (Kamei et al.) in view of Henderson et al., Schnuch et al., EPA pesticide Inert Ingredients (2002), Symecko et al., Miura et al. (US Pat. App. Pub. 2001/0046986) and Wu.

The claimed invention is directed to a granule bait for controlling house flies containing one of more insect controlling agents, one or more lures, one or more foods, and one or more filling materials, where in the size of granule is between about 1 mm and about 5 mm.

Kamei et al. disclose granules for controlling flies prepared by mixing 60 g sugar powder, 0.8 g pigment, 15 mg cis-9-tricosene (1.5 ml as 1 wt.% acetone solution), 100 ml mixture of

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methanol and acetone and 7 ml of a binder (20 wt% aqueous solution of gum arabic), evaporating the solvent and screening through 2 mm mesh sieve, spraying aqueous solution, kneading and making into grains about 2 mm in mean size, under pressure, where the concentration of cis-9-tricosene in the prepared specimens was 0.025 wt% and the granules contained 1 wt % of methomyl (Column 8, lines 36-68, Column 9, lines 1-30). It is disclosed that the pigments include yellow pigments, such as Hansa Yellow, pigment Yellow 1 (alpha-(o-nitro-p-anisylazo)-o-acetoacetotoluide), and that mixtures of pigments can be used (Columns 2, 3, Column 4, lines 1-23). It is disclosed that the granules are preferably about 1 to about 3 mm in grain size (Column 4, lines 23-36). It is disclosed that various insecticides which have insecticidal effect on flies can be used, including pyrethroid, organic phosphorous and carbamate insecticides (Column 4, lines 37-68, Column 5, lines 1-24). It is disclosed that accidental ingestion preventing agents can be used (Column 5, lines 55-60).

Henderson et al. disclose that denatonium benzoate, marketed under the trade name Bitrex, has been used for at least 20 years as an aversive agent when added to toxic substances to prevent accidental ingestion (page 203).

Schnuch et al. disclose that sugars, such as sucrose and lactose, are effective baits for the housefly, *Musca domestica* (Pages 767, 7680).

EPA pesticide Inert Ingredients (2002) discloses that Pigment Yellow 73 (Hansa Brilliant Yellow 4GX) is suitable for use as an inert ingredient in pesticides (Abstract).

Symecko et al. disclose that lactose containing granules using maltodextrin as a binder had larger mean size and improved friability than those containing polyvidone (Abstract).

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Miura et al. disclose imidacloprid and thiametoxam are effective for controlling flies. can be prepared in the form of granules, that said preparations can include dispersants and that pyrethroid, organophosphorous, carbamate and phenylpyrazole insecticides can also be used(Paragraphs 0016, 0037, 0038, 0042).

Wu disclose arylpyrazole can be used in granules and that the compositions can contain other additives such as dispersants, such as alkylate vinylpyrrolidone polymers (abstract, column 7, lines 10, 11, Column 8, lines 12-35).

Kamei et al. disclose granules for controlling flies prepared by mixing 60 g sugar powder, 0.8 g pigment, 15 mg cis-9-tricosene (1.5 ml as 1 wt.% acetone solution), 100 ml mixture of methanol and acetone and 7 ml of a binder (20 wt% aqueous solution of gum arabic), evaporating the solvent and screening through 2 mm mesh sieve, spraying aqueous solution, kneading and making into grains about 2 mm in mean size, under pressure, where the concentration of cis-9-tricosene in the prepared specimens was 0.025 wt% and the granules contained 1 wt % of methomyl (Column 8, lines 36-68, Column 9, lines 1-30), that pigments include yellow pigments, such as Hansa Yellow, pigment Yellow 1 (alpha-(o-nitro-p-anisylazo)-o-acetoacetotoluide), that mixtures of pigments can be used, that the granules are preferably about 1 to about 3 mm in grain, that various insecticides which have insecticidal effect on flies can be used, including pyrethroid, organic phosphorous and carbamate insecticides and that accidental ingestion preventing agents can be used.

The difference between Kamei et al. and the claimed invention is that Kamei et al. does not expressly disclose the use of Denatonium Benozate, lactose, Yellow 73, maltodextrin or alkylated vinylpyrrolidone, imidacloprid or thiametoxam in a granule bait for controlling house

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flies. However, the prior art amply suggests the same as Henderson et al. disclose that denatonium benzoate, marketed under the trade name Bitrex, has been used for at least 20 years as an aversive agent when added to toxic substances to prevent accidental ingestion; Schnuch et al. disclose that sugars, such as sucrose and lactose, are effective baits for the housefly, *Musca domestica*; EPA pesticide Inert Ingredients (2002) discloses that Pigment Yellow 73 (Hansa Brilliant Yellow 4GX) is suitable for use as an inert ingredient in pesticides; Symecko et al. disclose that lactose containing granules using maltodextrin as a binder had larger mean size and improved friability than those containing polyvidone; Miura et al. disclose imidacloprid and thiametoxam are effective for controlling flies. can be prepared in the form of granules, that said preparations can include dispersants and that pyrethroid, organophosphorous, carbamate and phenylpyrazole insecticides can also be used; and Wu disclose that arylpyrazole can be used in granules and that the compositions can contain other additives such as dispersants, such as alkylate vinylpyrrolidone polymers. As such, one of ordinary skill in the art would have expected that addition of denatonium benzoate would deter the accidental ingestion of the granular bait, that the addition of lactose would provide an effective bait for houseflies, that Yellow 73 would be a suitable dye for a granule bait, that maltodextrin would be effective as a binder for a granule bait, that imidacloprid and thiametoxam would be effective insecticide when used in a granule bait in controlling houseflies, and that alkylated vinylpyrrolidone polymers would be suitable for use as dispersants in the formulation of granule baits.

The Examiner has duly considered the Applicant's arguments but deems them unpersuasive.

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, held the following:

(1) the obviousness analysis need not seek out precise teachings directed to the subject matter of the challenged claim and can take into account the inferences and creative steps that one of ordinary skill in the art would employ;

(2) the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents;

(3) it is error to look only the problem the patentee was trying to solve-any need or problem known in the field of endeavor at the time of invention and addressed by the prior art can provide a reason for combining the elements in the manner claimed;

(4) it is error to assume that one of ordinary skill in the art in attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem-common sense teaches that familiar items may have obvious uses beyond their primary purposes, and in many cases one of ordinary skill in the art will be able to fit the teachings of multiple patents together like pieces of a puzzle (one of ordinary skill in the art is not automaton);

(5) it is error to assume that a patent claim cannot be proved obvious merely by showing that the combination of elements was “obvious to try”. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396, 1397 (U.S. 2007).

The Applicant argues that the cited references disclose the use of solid carriers such as clay, diatomaceous earth, silica or clay. However, the claims do not exclude the use of the same. The Applicant provides no evidence that the prior art products would form lumps, that the applicant's claimed invention does not form lumps or that the claimed invention is hydrophobic. The prior art as indicated above disclose granules sizes which fall within the scope of the



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granules size range claimed by the Applicant. As indicated above, motivation is no longer a required element of a *prima facie* case of obviousness. In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior art as indicated disclose the reasoning for combining the references, as such, there is no improper hindsight reasoning.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. The Examiner maintains a flexible schedule, however, the Examiner may generally be reached Monday, Tuesday, Wednesday and Thursday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi  
Patent Examiner  
Technology Center 1600  
August 9, 2010

/Johann R. Richter/  
Supervisory Patent Examiner, Art Unit 1616